Filed 1/16/09 The Regents of the University of Cal. v. Superior Court CA3

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, Petitioner, v. THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent; LUCY CERVANTES WATKINS, Real Party in Interest.	C059792 (Super. Ct. No. 06AS02807)

Real party in interest Lucy Cervantes Watkins sued petitioner, The Regents of the University of California (the Regents), alleging she was subjected to various forms of harassment, discrimination and retaliation during her employment with the Regents. The respondent superior court granted the Regents' motion for judgment on the pleadings. *After entry of judgment of dismissal of the action*, the respondent court issued several orders purporting to grant reconsideration of and to vacate the order granting judgment on the pleadings. Because

the respondent court lacked jurisdiction to reconsider or vacate the order after entry of judgment, we shall issue a writ of mandate directing the respondent court to set aside the orders granting reconsideration and vacating the order granting judgment on the pleadings.

FACTS

Watkins filed an amended complaint against the Regents, alleging causes of action for sexual harassment, gender and race discrimination, harassment and retaliation. The Regents moved for judgment on the pleadings on the ground that Watkins had failed to exhaust her judicial remedies. The Regents argued that although Watkins pursued the Regents' internal grievance process, she did not file a petition for writ of administrative mandamus to challenge the Regents' denial of her grievance.

After a hearing, the respondent court issued a minute order on December 17, 2007, granting the Regents' motion for judgment on the pleadings. The court agreed that Watkins had failed to exhaust her judicial remedy by filing a petition for writ of mandamus to challenge the Regents' denial of her grievance. The court's minute order concluded: "Defendant shall submit a formal order and judgment of dismissal."

On January 9, 2008, the respondent court signed and filed a document captioned, "Order Following Hearing on Defendant's Motion for Judgment on the Pleadings." As relevant, that document provides:

"**IT IS THEREFORE ORDERED** that Defendant REGENTS OF THE UNIVERSITY OF CALIFORNIA's Motion for Judgment on the Pleadings and Request for Dismissal is hereby GRANTED.

"**IT IS FURTHER ORDERED** that Plaintiff LUCY WATKINS' Complaint on file in Case No. 06AS02807 be hereby dismissed with prejudice as to Defendant REGENTS OF THE UNIVERSITY OF CALIFORNIA.

"**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment as to Defendant's Motion for Judgment on the Pleadings be entered in favor of the REGENTS OF THE UNIVERSITY OF CALIFORNIA."

As explained more fully below, because the respondent court's written order dismissed the action as to the Regents, and was signed by the court and filed in the action, it constituted a judgment as to the Regents, pursuant to Code of Civil Procedure section 581d.[1]

The Regents served Watkins with notice of entry of the January 9, 2008, order on January 22, 2008.

Meanwhile, Watkins made efforts to file a second amended complaint in order to substitute an individual defendant in place of a Doe defendant. Thus, on December 12, 2007, Watkins filed a document captioned, "First Doe Amendment to Plaintiff's Complaint," which identified the individual defendant by name. On January 17, 2008, Watkins filed a memorandum of points and

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[1] Undesignated statutory references are to the Code of Civil Procedure.

authorities in support of her motion to file a second amended complaint to include the individual defendant. The opposition to that motion argued, among other things, that the doctrine of exhaustion of judicial remedies barred any action against the individual defendant. In reply to that opposition, filed on February 11, 2008, Watkins included a footnote urging the respondent court to reconsider its December 17, 2007, order granting the Regents' motion for judgment on the pleadings, based on an appellate decision filed on January 28, 2008, *Ahmadi-Kashani v. Regents of University of California* (2008) 159 Cal.App.4th 449 (*Ahmadi-Kashani*). The respondent court denied Watkins's motion to file a second amended complaint.

However, the next day, on February 20, 2008, the respondent court issued a minute order, on the court's own motion, granting reconsideration "in this matter," and vacating the order of December 17, 2007, which granted the motion for judgment on the pleadings. The court's minute order invited the parties to submit supplemental briefing regarding the *Ahmadi-Kashani* opinion. There followed two minute orders in which the respondent court, on April 23, 2008, again vacated the December 17, 2007, order and denied the Regents' motion for judgment on the pleadings, and then, on July 18, 2008, vacated its order of April 23, 2008. The court's July 18, 2008, order

implicitly again denied the Regents' motion for judgment on the pleadings.[2]

The Regents then filed a petition for writ of mandate in this court, arguing the respondent court lacked authority to reconsider the order granting judgment on the pleadings because judgment had been entered. In the writ petition, the Regents acknowledge their failure to raise this argument before the respondent court in the first instance, noting that "counsel did not appreciate the significance of the judgment's entry until it set about the task of preparing this petition." We do not condone the Regents' failure to allow the respondent court the opportunity to correct its mistake. However, because we agree the respondent court lacked jurisdiction to reconsider the order granting judgment on the pleadings, we will issue a writ.

We notified the parties we were considering issuing a peremptory writ in the first instance, and requested opposition to the petition, pursuant to *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171. We also stayed all proceedings in the action pending filing of opposition and further order of this court. Having received and considered Watkins's opposition, we shall issue a peremptory writ.

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[2] Because, as we shall explain, the trial court no longer had authority to grant reconsideration of the order granting judgment on the pleadings, the respondent court's postjudgment orders are not appealable. (See *Ramon v. Aerospace Corp.* (1996) 50 Cal.App.4th 1233, 1238 [an order granting reconsideration after entry of judgment "was not appealable because the trial court no longer had authority to rule on that motion"].)

DISCUSSION

"After entry of judgment, the superior court [does] not have jurisdiction to entertain or decide a motion for reconsideration. [Citations.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859, fn. 29.) Nor may the superior court reconsider a judgment on its own motion, after entry of judgment. (See, e.g., *Lankton v. Superior Court* (1936) 5 Cal.2d 694, 696.)

"A court may reconsider its order granting or denying a motion and may even reconsider or alter its judgment so long as judgment has not yet been entered. Once judgment has been entered, however, the court may not reconsider it and loses its *unrestricted* power to change the judgment. It may correct judicial error only through certain limited procedures such as motions for new trial and motions to vacate the judgment. [Citations.]" (*Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1606; see also, 7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 65, p. 600 ["Judicial error, i.e., an erroneous decision, can only be rectified by the regular procedures for attack on judgment: motion for a new trial, motion to vacate judgment, appeal, or an independent action in equity"].)

Obviously, just as the superior court may not reconsider its judgment after entry of judgment, it may not reconsider any prejudgment order after entry of judgment. (See, e.g., *Ramon v. Aerospace Corp., supra,* 50 Cal.App.4th at pp. 1235, 1238 [after entry of judgment, trial court lacked authority to reconsider a prejudgment order granting summary judgment]; *Ten Eyck v.*

Industrial Forklifts Co. (1989) 216 Cal.App.3d 540, 542, 545 [same].)

Thus, if the respondent court entered judgment when it filed its order on January 9, 2008, then the court lacked jurisdiction to reconsider the December 17, 2007, order granting the Regents' motion for judgment on the pleadings.

"A written dismissal of an action shall be entered in the clerk's register and is effective for all purposes when so entered. [¶] All dismissals ordered by the court shall be in the form of a written order signed by the court and filed in the action and those orders when so filed shall constitute judgments and be effective for all purposes, and the clerk shall note those judgments in the register of actions in the case." (§ 581d.) A judgment is entered when filed with the clerk. (§ 668.5.) The January 9, 2008, order is a written order, signed by the court, which dismisses the action. The order was filed by the court in the action, and consequently was entered as a judgment for all purposes.

It does not matter that the Regents mislabeled the judgment as an "Order Following Hearing on Defendant's Motion for Judgment on the Pleadings." As the Court of Appeal explained in *Passavanti v. Williams, supra*, 225 Cal.App.3d at page 1606: "The distinction between orders and judgments is further blurred by the fact that certain orders, i.e., orders of dismissal, are considered the judgment (Code Civ. Proc., § 581d) and by the fact that sometimes the parties mislabel the judgment, referring to it instead as an order. The fundamental distinction remains,

however, that a judgment, no matter how designated, is the final determination of the rights of the parties in an action. Thus, an 'order' which is the final determination in the action is the judgment."

Watkins was not without remedies. She had 15 days after January 22, 2008, the date of notice of entry of the January 9, 2008, judgment, to file a motion to vacate the judgment or a motion for new trial. (§§ 659, subd. 2; 663a, subd. 2.) Alternatively, Watkins had 60 days after January 22, 2008, to file a notice of appeal. (Cal. Rules of Court, rule 8.104(a)(2).) During the 15-day time period, the Court of Appeal filed its opinion in *Ahmadi-Kashani*. Our record reflects Watkins was aware of that decision given that she referred to it in the reply brief she filed in the superior court on February 11, 2008.

Watkins's opposition to this petition raises several contentions about the authority of the respondent superior court, after entry of judgment, to vacate the order granting judgment on the pleadings. These contentions are unsupported by authority and in any event have no merit. She first argues that the January 9, 2008, judgment does not constitute a judgment because, at the time of the judgment, her motion to amend to add an individual in place of a Doe defendant was pending before the superior court. This argument ignores that the January 9, 2008, judgment was final as to the Regents because it resolved all issues between Watkins and the Regents, and thus was immediately appealable. (See, e.g., *Nguyen v. Calhoun* (2003) 105

Cal.App.4th 428, 437.) Her contention that the January 9, 2008, judgment was not a final judgment because it was vacated by the respondent superior court on February 20, 2008, ignores that the respondent court lacked jurisdiction to vacate the entered judgment. And her contention that the January 9, 2008, judgment does not constitute a judgment because there was no notice that judgment would be entered is belied by the record -- the respondent court's December 17, 2007, order directed the Regents to submit a judgment of dismissal.

Finally, in granting reconsideration, the respondent court cited two opinions, but neither authorizes a court to grant reconsideration of a prejudgment order or a judgment after entry of judgment. *Le Francois v. Goel* (2005) 35 Cal.4th 1094 at pages 1107-1108, holds only that a trial court retains inherent authority to reconsider on its own motion its prior interim orders or rulings. And although *In re Marriage of Barthold* (2008) 158 Cal.App.4th 1301 at pages 1312-1313, holds that a trial court may reconsider postjudgment orders in a marital dissolution action, the opinion does not address the authority precluding trial courts from reconsidering a prejudgment order or judgment after entry of judgment.

DISPOSITION

Let a peremptory writ of mandate issue directing the respondent superior court to vacate its postjudgment orders of February 20, 2008, April 23, 2008, and July 18, 2008, and to recognize the finality of the January 9, 2008, judgment. Upon finality of this opinion, the stay of all proceedings issued by

this court on September 29, 2008, shall be vacated. The parties shall bear their own costs on this writ proceeding. (Cal. Rules of Court, rule 8.493(a)(1)(B).)

SIMS, Acting P. J.

We concur:

HULL, J.

CANTIL-SAKAUYE, J.